

CITY OF ANN ARBOR

REQUEST FOR PROPOSALS

FOR

Renewable Energy Certificates

RFP NO. 734

ISSUED: July 1, 2009

DUE DATE: September 15, 2009

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Section 1

GENERAL INFORMATION

A. Objective

The City of Ann Arbor, MI is soliciting bids for a "green contract for differences" for the acquisition of renewable energy certificates (RECs). The City seeks to purchase 15,000 MWh of RECs per year for a period of 10 to 20 years, obtaining these environmental benefits through a contract for differences that provides long-term fiscal stability. This energy agreement will help the City of Ann Arbor meet its goal of obtaining 30 percent of municipal energy from renewable sources in 2010.

B. Issuing Office

The RFP is issued by the City of Ann Arbor, Michigan, Procurement Unit of Financial Services. Unless otherwise noted, all correspondence regarding this RFP must be addressed to:

Dee Lumpkin
Procurement Assistant
City of Ann Arbor
100 North Fifth Avenue
P.O. Box 8647
Ann Arbor, MI 48107-8647
734-994-2719

C. Contract Administration and Questions

Technical questions, as well as all communication concerning the contract (following the signing of a contract) must be directed to:

Andrew Brix, Energy Programs Manager
City of Ann Arbor
P.O. Box 8647
Ann Arbor, MI 48107
(734) 794-6430 x43711, abrix@a2gov.org

D. Pre-Bidding Meeting

There will not be a pre-bidding meeting related to this request for proposals.

E. Proposal Submittals

Original plus five (5) copies of the service proposal shall be submitted. The information included should be as concise as possible. Cost proposals must be submitted in a separate sealed envelope.

To be considered, each firm must submit a complete response to this RFP using the format found in Section 3 of this RFP. No other distribution of proposals is to be made by the Respondent. Appendix A, Proposal Submittal Form and Signature Page and Appendix B, Legal Status of Respondent must be completed and returned with the proposal. An official, authorized representative to bind the Respondent to its proposal provisions must sign each proposal copy in ink.

Each proposal must remain valid at least one hundred twenty (120) days from the due date of this RFP, or until City Council action on a contract.

F. Selection Criteria

Responses to this RFP will be evaluated to decide which Respondent is the most qualified, capable and cost-effective service provider. The proposal(s) will be evaluated by a selection committee composed of staff members from various units of the City, using the point system described in Section 3 (page 9) of this RFP. The City reserves the right to conduct interviews with respondents to decide the most qualified, capable and cost-effective Proposer.

G. Changes in the RFP

Should any prospective Respondent be in doubt as to the true meaning of any portion of this RFP, or should the Respondent find any ambiguity, inconsistency, or omission therein, the Respondent shall make a written request for an official interpretation or correction. Such requests must be submitted to the issuing office not less than fourteen (14) days prior to the final date of submittal of the proposals. The person making the request shall be held responsible for its prompt delivery.

The City's staff will make such interpretation or correction, as well as any additional RFP provisions that the City may decide to include, only as an RFP addendum. Staff will mail or deliver addendums to each recorded as having received a copy of the RFP. Any addendum issued by the City shall become a part of the RFP. Respondent should consider issued addendums in preparing his or her proposal. Only bulletins duly issued by the City shall be binding.

H. Proposal Receipt

Proposals must be received by the City of Ann Arbor, Procurement Office, 5th Floor, City Hall, to Dee Lumpkin's office, 100 N. Fifth Ave., Ann Arbor, Michigan 48107 **on or before 2:00 P.M. on September 15, 2009**. Prospective Respondents are responsible for the timely receipt of their proposal. All proposals become the property of the City of Ann Arbor once reviewed, whether awarded or rejected. Late proposals will not be considered or accepted.

I. Disclosures

All information in a Respondent's proposal is subject to disclosure under the provisions of Public Act No. 442 of 1976 known as the "Freedom of Information Act". This act also provides for the complete disclosure of contracts and attachments thereto.

J. Professional Services Agreement

Contractor selected to do business with the City of Ann Arbor will be required to execute the standard Professional Services Agreement with the City (a sample agreement is included with this RFP). The City will not entertain requests to revise, amend, or change the language of the standard Professional Services Agreement. Proposal submitters must base their proposal on the assumption that, if selected, they will execute the Professional Services Agreement. ANY EXCEPTION TO THE TERMS AND CONDITIONS AND SPECIFICATIONS MUST BE NOTED AND IT IS UNDERSTOOD THAT SUCH EXCEPTIONS MAY RESULT IN PROPOSAL BEING DEEMED NONCONFORMING.

K. Cost Liability

The City of Ann Arbor assumes no responsibility or liability for costs incurred by the consultant prior to the execution of a Contract.

L. Non-Discrimination by City Contractors

All contractors proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations promulgated by the Administrator and approved by City Council, shall receive approval from the Human Resources Director prior to entering into a professional services agreement with the City. Said firms shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.

Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Human Resources Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the firm can reasonably be expected to recruit, the prospective contractor shall be accepted by the Human Resources Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Human Resources Director will conduct another review. Other firms shall develop an affirmative action program in conjunction with the Human Resources Director. The program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the firms labor recruitment area.

M. Living Wage

All contractors proposing to do business with the City of Ann Arbor, except those exempted by City Code, agree to comply with living wage provisions of Chapter 23 of the Ann Arbor City Code and, if the contractor has a "covered employee" as defined therein to pay those employees providing services to the City under this agreement a "living wage" as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance.

N. Independent Cost(s) Determination

1. By submission of a proposal, the Respondent certifies, and in the case of joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a. They have arrived at the cost(s) in the proposal independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such fees with any other prospective Respondent or with any competitor.
 - b. Unless otherwise required by law, the costs which have been quoted in the proposal have not been knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to award directly or indirectly to any other prospective Respondent or to any competitor.
 - c. No attempt has been made or shall be made by the Respondent to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she or he is the person in the Respondent's organization responsible within that organization for the decision as to the cost(s) being offered in the proposal and has not participated (and will not participate) in any action contrary to 1.a., b., or c. above. SEE APPENDIX A.

O. Reservation of Rights

The City of Ann Arbor reserves the right to accept any proposal in whole or in part, to reject any or all proposals in whole or in part and to waive irregularity and/or informalities in any proposal and to make the award in any manner deemed in the best interest of the City.

P. Verify your firm's operating authority to do business in the State of Michigan

End of Section

Section 2

SCOPE OF SERVICES

Specifications and Options	
Quantity	Provide RECs to cover 15,000 MWh annually, to be supplied via a Contract for Differences.
Source Location	The City prefers RECs sourced from Michigan or within the region, but all source locations will be considered. Please include the location of all sources of power, including the name and address of the power plants or companies if possible.
Source Age	The City requires 100% new renewable sources as defined by Green-e.
Renewable Resources	<p>Wind and solar are preferred as sources, but other sources, including landfill gas, hydro and biomass will also be considered. For RECs from generators using biomass as a feedstock, please specify the type of feedstock. For RECs from hydroelectric generators, please specify whether the source has been certified by the Low Impact Hydro Institute.</p> <p>Please provide a detailed description of any generation mix alternatives available.</p>
Pricing Structure	If there are different cost options for generation mixes or location factors, please describe in detail.
Term	The preferred term is 10 to 20 years.
Pollution Benefits	Please describe type and quantity of pollution benefits owned by the customers, including CO ₂ , and other attributes.
Promotional Value	Describe all promotional benefits your organization will provide.
Certification	Green-e
Professional Services Agreement	See Appendix C – Example Professional Services Agreement with Exhibits.
Business Information	Please provide all information listed under " Required Business Information " below.
Project Opposition	If there has been any publicized local, state, regional or national opposition to any of the specific generators of the renewable energy certificates that your organization is aware of, please disclose this.

SCHEDULE

RFP Released	July 1, 2009
No RFP Questions will be accepted after	September 1, 2009
Proposals due	September 15, 2009
Evaluations complete	September 30, 2009

REQUIRED BUSINESS INFORMATION

Please provide the following information about your business.

- A. Legal name of firm
- B. Primary contact at firm
- C. Street address, city, state, and zip code
- D. Mailing address with city, state and zip code for correspondence
- E. Main telephone number
- F. Fax number
- G. World Wide Web address
- H. Parent company (if any)
- I. Date established under current name
- J. Corporate management
- K. Provide three current references for which you have provided services similar to those requested by for this RFP. Include company name, contact person, type and length of service provided, phone number and authority to contact individual.
- L. Provide a Recent **Audited** or **Reviewed** Financial Statement (2 years). This must include Accountant prepared "Notes to Financial Statements" contained in the Audit or Reviewed Financial Statement.

End of Section

Section 3

INFORMATION REQUIRED FROM ALL PROPOSAL SUBMITTERS

The following Section describes the weighted point system that will be used for evaluation of the proposals.

A. Professional/Financial Qualifications - 20 points

State the full name and address of your organization and, if applicable, the branch office or other subordinate element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. Identify all subcontractors that will play a significant role in this project. Provide qualifications/certifications for all major players in this project to convince reviewers of the experience and qualifications necessary to successfully complete this project. Financial disclosure information will also be considered in determining qualifications.

B. Past involvement with Similar Projects - 30 points

The written proposal should include a maximum of three references of public/private owners for which the Respondent has provided similar services for providing RECs, preferably through long-term agreements.

C. Environmental Benefits and Sources of RECs - 40 points

The City prefers RECs sourced from Michigan or within the region, but all source locations will be considered. Please include the location of all sources of power, including the name and address of the power plants or companies if possible. The City prefers RECs from 1) wind, 2) hydro 3) biomass though other sources will be considered and evaluated. Please provide a detailed description of the generation mix options and alternatives available for consideration and relevant distinctions for each.

E. Cost – 10 points

All costs should be listed in a separate sealed envelope.

F. Appendices

Legal Status of Respondent, Contract Compliance Form and Declaration of Living Wage Compliance Form must be completed and returned with the proposal. These elements should be included as attachments to the proposal submission.

G. Proposal Evaluation

Staff will evaluate each proposal by the above-described criteria and point system (A through E) to select the winning proposal. The City reserves the right to not consider any proposal which it determines to be unresponsive and deficient in any of the information

requested for evaluation. The Committee may contact references to verify material submitted by the Respondent. The City will determine whether the final scope of the project to be negotiated will be entirely as described in this RFP, a portion of the scope, or a revised scope.

End of Section

SECTION 4
APPENDICES

Appendix A – Proposal Submittal Form and Signature Page

Appendix B – Legal Status of Respondent

Appendix C – Example Professional Service Agreement with Exhibits

APPENDIX A

**PROPOSAL SUBMITTAL FORM
AND SIGNATURE PAGE FOR
REQUEST FOR PROPOSAL NO. 734**

RESPONSE: Are these items included in your proposal? Respond Yes, No, or NA – Explain No or NA in respondent Comments

_____ ANY EXCEPTION TO THE TERMS AND CONDITIONS AND SPECIFICATIONS HAVE BEEN NOTED AND IT IS UNDERSTOOD THAT SUCH EXCEPTIONS MAY RESULT IN PROPOSAL BEING DEEMED NONCONFORMING.

_____ All requested documents requested have been included.

_____ Reference list is attached.

_____ Required proof of insurance will be provided, if my firm receives the award.

_____ The undersigned, Respondent having examined the proposal terms and conditions and specifications, hereby proposes and agrees to provide stated services to the City of Ann Arbor.

Signature below certifies that I have carefully reviewed the City's terms, conditions, and specifications on this Request For Proposal and have clearly indicated in writing any exceptions my company is making to these terms, conditions, and specifications and am authorized to offer such services. **Respondent agrees to honor its proposal for a period of 90 days from the proposal due date.**

Therefore, I/we, the undersigned, hereby agree to provide the services and/or materials as specified if an award is made to my firm without any additional charges, terms, and/or conditions.

COMPANY NAME: *
STREET/P. O. BOX:
CITY, STATE, AND ZIP CODE:
DATE: _____ TELEPHONE: _____ FAX: _____

AUTHORIZED SIGNATURE:
PRINTED NAME OF SIGNER: _____
TITLE OF SIGNER: _____

* NOTE: If the PROPOSER is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officer or agents. If PROPOSER is a partnership, the true name of the firm shall be set forth with the signature of the partners authorized to sign contracts on behalf of the partnership. If PROPOSER is an individual, his signature shall be placed above.

Specific questions concerning your proposal should be directed to:
Telephone Number: _____

APPENDIX B

LEGAL STATUS OF RESPONDENT

(The Proposer shall fill out the appropriate form and strike out the other two.)

* A corporation organized and doing business under the laws of the state of

_____, for whom _____

bearing the office title of _____, whose signature is affixed to this

proposal, is authorized to execute contracts.

* A partnership, list all members and the street and mailing address of each:

_____	_____
_____	_____
_____	_____
_____	_____

Also identify the County and State where partnership papers are filed:

County of _____, State of _____

* An individual, whose signature with address, is affixed to this proposal: _____
(Initial Here)

APPENDIX C

Example Professional Service Agreement with Exhibits

AGREEMENT BETWEEN

AND
CITY OF ANN ARBOR
FOR
PROFESSIONAL SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 100 North Fifth Avenue, Ann Arbor, Michigan 48104 ("City"), and
, a _____ with its address at _____
(State where organized) (Partnership, Sole Proprietorship, or Corporation)
_____ ("Consultant"), agree as

follows:

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

A. Administering Department means _____.

B. Contract Administrator means _____ or whomever the Contract Administrator may from time to time designate.

C. Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement.

D. Project means _____
Project name; File and Subfile No.

II. DURATION

This agreement shall become effective on _____, 20__, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this agreement.

III. SERVICES

A. The Consultant agrees to provide _____
(engineering and/or architectural)

professional services ("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original agreement.

- B. Quality of Services under this agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all applicable laws, ordinances and regulations. Unless otherwise noted, the Consultant shall perform its Services in accordance with the City's Public Services Area Standard Specifications.
- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid on the basis of reasonable time spent and materials used at the rates and prices specified in Exhibit B for acceptable work performed and acceptable Deliverables received. The total fee to be paid the Consultant for the Services shall not exceed \$_____. Payment shall be made monthly following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be on the basis of reasonable time spent and reasonable quantities of materials used, according to the schedule of rates in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this Contract, such insurance policies, including those set forth below, as will protect itself from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - 1. Professional liability insurance protecting the Consultant and its employees in an amount not less than \$1,000,000.
 - 2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance" equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect to Bodily Injury Liability or Property Damage Liability, or both combined.

\$2,000,000 Per Job General Aggregate

\$1,000,000 Personal and Advertising Injury

1. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under V.A.3 and V.A.4 of this Contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

C. In the case of all Contracts involving on-site work, the Consultant shall provide to the City before the commencement of any work under this Contract documentation demonstrating it has obtained the above mentioned policies. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Consultant supplies a copy of the endorsements required on the policies. Upon request, the

Consultant shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this Contract, the Consultant shall deliver proof of renewal and/or new policies to the Administering Department at least ten days prior to the expiration date.

- D. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- E. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Consultant or its employees and agents occurring in the performance of this agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate any inequality based upon race, national origin or sex. The Consultant agrees to comply with the provisions of Section 9:161 of Chapter 112 of the Ann Arbor City Code, Exhibit C
- B. Living Wage. The Consultant agrees to comply with living wage provisions of Chapter 23 of the Ann Arbor City Code and, if a "covered employer" as defined therein to pay those employees providing Services to the City under this agreement a "living wage," as defined in Chapter 23 of the Ann Arbor City Code; and, if requested by the City, provide documentation to verify compliance. The Consultant agrees to comply with the provisions of Section 1:815 of Chapter 23 of the Ann Arbor City Code, Exhibit D.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services it is to provide pursuant to this agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this agreement.

- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

A. This agreement may be terminated by either party without further notice in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of the breach.

B. The City may terminate this agreement if it decides not to proceed with the Project by notice pursuant to Article XII. If the Project is terminated for reasons other than the breach of the agreement by the Consultant, the Consultant shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

IX. OBLIGATIONS OF THE CITY

A. The City agrees to give the Consultant access to the Project area and other City owned properties as required to perform the necessary Services under this agreement.

B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

A. The Consultant shall not subcontract or assign any portion of the services without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.

B. The Consultant shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

XI. NOTICE

All notices and submissions required under this agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Contract Administrator or placed in the U.S. mail, postage prepaid to the Administering Department, care of the Contract Administrator.

XII. CHOICE OF LAW

This agreement shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Consultant and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this agreement.

XIII. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this agreement.

XIV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties and circumstances.

XV. EXTENT OF AGREEMENT

This agreement represents the entire understanding between the City and the Consultant and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this agreement. This agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

XVI. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the Consultant, including tracings, drawings, estimates, specifications, field notes, investigations, studies and reports shall become the property of, and, at the option of the City, be delivered to, the City. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

For Consultant

By _____

For City of Ann Arbor

By _____
John Hieftje, Mayor

By _____
— Yvonne Carl, Interim City Clerk

Approved as to form and content

By _____
Abigail Elias, City Attorney

Approved as to substance

By _____
Ron Olson, Interim City Administrator

By _____
Sue F. McCormick, Director of Water Utilities

**EXHIBIT A
SCOPE OF SERVICES**

See Attached

Exhibit B

Fee Schedule

EXHIBIT C

FAIR EMPLOYMENT PRACTICE

The consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

9:161 NONDISCRIMINATION BY CITY CONTRACTORS

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the Director prior to entering into a contract with the City, unless specifically exempted by administrative policy. All City contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of one year at which time the Director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the Director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the Director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review.
- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable Federal or State labor laws:

- (a) To set goals, in conference with the Human Resources Director, for each job category or division of the work force used in the completion of the City work;
 - (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
 - (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The Director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The Director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (6) All City contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:
- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the contractor ineligible for the award of any future contracts with the City for a specified length of time;
 - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
 - (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

<u>Contract Amount</u>	<u>Assessed Damages Per Day of Non-Compliance</u>
\$ 10,000 - 24,999	\$ 25.00
25,000 - 99,999	50.00
100,000 - 199,999	100.00
200,000 - 499,999	150.00
500,000 - 1,499,999	200.00
1,500,000 - 2,999,999	250.00
3,000,000 - 4,999,999	300.00
5,000,000 - and above	500.00

- (e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under this contract.

Exhibit D
Living Wage Ordinance Excerpts

The Consultant, its agents or sub-contractors, shall comply with all requirements of Chapter 23 of Title I of the Code of the City of Ann Arbor and in particular the following excerpts therefrom:

1:813. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (1) "Contractor/vendor" is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000 for any 12-month period. "Contractor/vendor" does not include a person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City.
- (2) "Covered Employee" means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.
- (3) "Covered Employer" means a contractor/vendor or grantee that has not been granted an exemption from this Chapter pursuant to Section 1:817.
- (4) "Employee" means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if
 - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
 - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) "Employee Health Benefits" or "Health Benefits" means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no

less than \$1 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.

- (6) "Grant" means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other non-personnel costs.
- (7) "Grantee" is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000 for any 12-month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000 for any 12-month period.
- (8) "Living Wage" means a wage equal to the levels established in Section 1:815.
- (9) "Person" means any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (10) "\$10,000 for any 12 month period" is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

1:814. Applicability.

- (1) This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a non-profit contractor/vendor or non-profit grantee unless it employs or contracts with ten (10) or more individuals.
- (2) This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

1:815. Living Wages Required.

- (1) Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a) For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).
 - (b) For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2) In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.
- (3) The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1.815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

CITY OF ANN ARBOR PROCUREMENT OFFICE HUMAN RIGHTS CONTRACT COMPLIANCE FORM

Entire Organization (Totals for All Locations where applicable)

Name of Company/Organization _____
Date Form Completed _____

Name and Title of Person Completing this Form _____

Name of President _____

Address _____ County _____ Phone # _____
(Street address) (City) (State) (Zip)

Fax# _____

Email Address _____

EMPLOYMENT DATA

Job Categories	Number of Employees (Report employees in only one category)													
	Male							Female						
	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian Or Other Pacific Islander	American Indian or Alaska Native	White	Black or African American	Asian	Hispanic or Latino	Native Hawaiian or Other Pacific Islander	American Indian or Alaskan Native	TOTAL COLUMNS A-M	
	A	B	C	D	F	G	H	/	J	K	L	M		
Exec/ Sr. Level Officials														
Supervisors														
Professionals														
Technicians														
Sales														
Admin. Support														
Craftspeople														
Operatives														
Service Workers														
Laborers/Helper														
Apprentices														

Other													
TOTAL													
PREVIOUS YEAR TOTAL													

6/06

Questions about this form? Call Procurement Office: (734) 794-6576

→ **NEW RATE EFFECTIVE APRIL 30, 2009** ←

LIVING WAGE ORDINANCE – CITY OF ANN ARBOR

\$11.71 per hour **\$13.06 per hour**

if the employer provides health care benefits*

if the employer does **NOT** provide health care benefits*

Employers providing services to or for the City of Ann Arbor or recipients of grants or financial assistance from the City of Ann Arbor for a value of more than \$10,000 in a twelve-month period of time **must pay those employees performing work on a City of Ann Arbor contract or grant, the above living wage.**

ENFORCEMENT

The City of Ann Arbor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Persons denied payment of the living wage have the right to bring a civil action for damages in addition to any action taken by the City.

Violation of this Ordinance is punishable by fines of not more than \$500/violation plus costs, with each day being considered a separate violation. Additionally, the City of Ann Arbor has the right to modify, terminate, cancel or suspend a contract in the event of a violation of the Ordinance.

** Health Care benefits includes those paid for by the employer or making an employer contribution toward the purchase of health care. The employee contribution must not exceed \$.50 an hour for an average work week; and the employer cost or contribution must equal no less than \$1/hr for the average work week.*

The Law Requires Employers to Display This Poster Where Employees Can Readily See It.

*For Additional Information or to File a Complaint
Contact:*

Dee Lumpkin, Procurement Assistant
734/794-6576 or dlumpkin@a2gov.org LW-1

The law requires employers to display this poster where employees can readily see it.

City of Ann Arbor

**LIVING WAGE ORDINANCE
DECLARATION OF COMPLIANCE**

The Ann Arbor Living Wage Ordinance (Section 1:811-1:821 of Chapter 23 of Title I of the Code) requires that employers providing services to the City or recipients of grants for financial assistance (in amounts greater than \$10,000 in a twelve-month period of time) pay their employees who are working on the City project or grant, a minimum level of compensation known as the **Living Wage**. This wage must be paid to the employees for the length of the contract/project.

Companies employing fewer than 5 persons and non-profits employing fewer than 10 persons are exempt from the Ordinance. If this exemption applies to your firm, please check below:

- This company is exempt due to the fact that we employ or contract with fewer than 5 individuals.
- This **non-profit agency** is exempt due to the fact that we employ or contract with fewer than 10 employees.

The Ordinance requires that all contractors/vendors and/or grantees agree to the following terms:

- a) To pay each of its employees performing work on any covered contract or grant with the City, no less than the living wage, which is defined as \$11.71/hour when health care is provided, or no less than \$13.06/hour for those employers that do *not* provide health care. It is understood that the Living Wage will be adjusted upward each year on April 30, and covered employers will be required to pay the adjusted amount thereafter. The rates stated above include the adjustment for 2009.
- b) Please check the boxes below which apply to your workforce:

 Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage without health benefits Yes No
OR
 Employees who are assigned to *any covered* City project or grant will be paid at or above the applicable living wage with health benefits Yes No
- c) To post a notice approved by the City regarding the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- d) To provide the City payroll records or other documentation as requested; and,
- e) To permit access to work sites to City representatives for the purposes of monitoring compliance, investigating complaints or non-compliance.

The undersigned authorized representative hereby obligates the contractor/vendor or grantee to the above stated conditions under penalty of perjury and violation of the Ordinance.

Company Name

Signature of Authorized Representative

Type or Print Name and Title

Date signed

Address City State Zip

Phone (area code)

Email address

Questions about this form? Please contact:
Procurement Office City of Ann Arbor
Phone: 734/794-6576 Fax:734/994-1795